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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230608-0145]

RIN 0648-BM00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 54

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 54 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 54), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule and Amendment 54 revise Gulf greater amberjack sector allocations and catch limits. The purposes of this final rule and Amendment 54 are to end overfishing of Gulf greater amberjack and to update catch limits to be consistent with the best scientific information available.

DATES: This final rule is effective *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, except for the revisions for §§ 622.39(a)(1)(v) and

622.41(a)(1)(iii), which are effective on *[insert date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of Amendment 54, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *<https://www.fisheries.noaa.gov/action/amendment-54-modifications-greater-amberjack-catch-limits-sector-allocation-and-rebuilding>*.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727-824-5305, or email: *Kelli.ODonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes greater amberjack, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 2, 2023, NMFS published a notice of availability for Amendment 54 and requested public comment (88 FR 13077). NMFS approved Amendment 54 on May 26, 2023. On March 10, 2023, NMFS published a proposed rule for Amendment 54 and requested public comment (88 FR 14964). The proposed rule and Amendment 54 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 54 and

implemented by this final rule is described below.

All weights in this final rule are in round weight unless otherwise noted.

Background

Greater amberjack in the Gulf exclusive economic zone (EEZ) are managed as a single stock with commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) (quotas). The allocation of the stock ACL between the commercial and recreational sectors is 27 percent commercial and 73 percent recreational and was implemented through Amendment 30A to the FMP in 2008 (73 FR 38139, July 3, 2008). In Amendment 30A, the Council initially decided to establish sector allocations based on the long-term average landings from the recreational and commercial sectors from 1981 through 2004. However, during that amendment's development, the Council noted that the early years of the time series were primarily recreational landings (84 percent of landings from 1981-1987) while the most recent years in the allocation time series (2001-2004) had increasing landings by the commercial sector (32 percent of landings from 2001-2004). Ultimately, the Council then agreed to an allocation that reassigned 2 percent of the commercial allocation to the recreational sector and established the current sector allocation.

Greater amberjack has been under a rebuilding plan since 2003. This rebuilding plan was implemented with

Secretarial Amendment 2 and was expected to rebuild the stock by 2010 (68 FR 39898, July 3, 2003). In 2006, the Southeast Data, Assessment, and Review (SEDAR) 9 assessment showed that the greater amberjack stock was not recovering as previously projected. The stock continued to be overfished and was experiencing overfishing. The Council developed Amendment 30A to end overfishing and rebuild the stock by 2010, consistent with the time frame of the original rebuilding plan. In 2010, the SEDAR 9 Update was completed and indicated that the stock remained overfished and was continuing to experience overfishing. In response, the Council developed Amendment 35 to the FMP (77 FR 67574, December 13, 2012). The management measures implemented in Amendment 35 were expected to end overfishing; however, it could not be determined if the stock would meet its rebuilding schedule until a new benchmark assessment was completed. In 2014, the SEDAR 33 benchmark stock assessment was completed and showed that greater amberjack remained overfished, was experiencing overfishing as of 2012, and did not meet the rebuilding time established in Secretarial Amendment 2. In 2015, the Council developed a framework action that further reduced the sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by the end of 2019 (80 FR 75432, December 2, 2015). In 2016, the SEDAR 33 Update assessment was completed and showed that greater amberjack was still overfished and undergoing overfishing

as of 2015 and the stock would not be rebuilt by 2019 as previously projected. In 2017, NMFS notified the Council that the stock was not making adequate progress towards rebuilding and the Council developed a framework action to modify the rebuilding time and the catch levels. The framework action, which was implemented in 2018, reduced sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by 2027 (82 FR 61485, December 28, 2017).

The SEDAR 70 assessment for Gulf greater amberjack was completed in November 2020, and indicated that the Gulf greater amberjack stock continued to be overfished and undergoing overfishing, but could rebuild by 2027 with reduced yields. NMFS informed the Council of these determinations in a letter dated April 7, 2021, and the Council began work on Amendment 54 to update the greater amberjack rebuilding plan.

The SEDAR 70 assessment used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 54, total recreational fishing

effort estimates generated from MRIP-FES are generally higher than both the MRFSS and MRIP-CHTS estimates. Although both MRIP-CHTS and MRIP-FES generate estimates measured in pounds of fish, these estimates are not directly comparable. To signify that the estimates use different scales, this rule uses the terms "MRIP-CHTS units" and "MRIP-FES units" to describe the recreational catch limits. To illustrate the difference in the survey estimates, the Southeast Fisheries Science Center (SEFSC) conducted an analysis to determine what the current greater amberjack stock ACL of 1,794,000 lb (813,745 kg) (MRIP-CHTS units) would be in MRIP-FES units. That analysis showed that greater amberjack stock ACL would be estimated at 2,930,000 lb (1,329,026 kg) (MRIP-FES units). This difference in the stock ACL is because MRIP-FES is designed to more accurately measure fishing effort, not because there was a sudden increase in fishing effort.

Based on the results of SEDAR 70, the Council's Scientific and Statistical Committee (SSC) recommended a decrease in the overfishing level (OFL) and acceptable biological catch (ABC) to end overfishing of greater amberjack and allow the stock to meet its current rebuilding time. Since these catch level recommendations assumed status quo sector allocations (27 percent commercial and 73 percent recreational), which were based in part on 1981-2004 landings estimates generated using

data generated by MRFSS, the Council requested that the SEFSC provide alternative catch level projections based on sector allocation alternatives that used MRIP-FES data and several different time series: the same time series used in Amendment 30A (1981-2004); a time series that begins when commercial greater amberjack landings were identified by species and ends prior to the implementation of the current sector allocations, sector catch limits, and accountability measures (AMs) (1993-2007); and a time series that begins when commercial greater amberjack landings were identified by species and ends with the most recent data available at the time the alternatives were developed (1993-2019). The Council's SSC reviewed these alternative sector allocation analyses and affirmed its prior determination that SEDAR 70 represented, and the projections produced by the assessment are, the best scientific information available.

The commercial and recreational allocation percentages impact the catch level projections. As more of the stock ACL is allocated to the recreational sector, the proportion of recreational discards increases. The recreational discard mortality rate (10 percent) is assumed to be less than the commercial discard mortality rate (20 percent). However, the magnitude of recreational discards is considerably greater than commercial discards because there are more recreational fishermen. Generally, a fish caught and released by a recreational fishermen has a greater

likelihood of survival than a fish released by a commercial fishermen because of the differences in how and where the sectors fish. However, because of the greater numbers of greater amberjack that are released by the recreational sector versus the commercial sector, the total number of discards that die from the recreational fishing exceeds those attributed to commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which results in a reduced OFL, ABC, and stock ACL. However, this is not a result of any change in how the recreational sector prosecutes the fishery but occurs because MRIP-FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarding fish.

In Amendment 54, the Council recognized that maintaining the current sector allocation percentages would disproportionately impact on the recreational sector given the transition to MRIP-FES and that maintaining the current time series updated with MRIP-FES data would disproportionately impact the commercial sector by failing to account for the fact that commercial landings of greater amberjack prior to 1993 may not have been properly identified. The Council decided to adjust the allocation in Amendment 54 using the 1993-2019 time series because this represents the longest time series during which commercial

greater amberjack landings have been identified by species. This results in a shift of the commercial and recreational allocation from 27 percent and 73 percent, respectively, to 20 percent and 80 percent, respectively.

The catch levels recommended by the SSC would increase the allowable harvest each year through the end of the rebuilding plan in 2027. However, the Council determined that because the greater amberjack stock has not rebuilt as expected under the current and previous rebuilding plans, a more cautious approach is necessary. Therefore, Amendment 54 and this proposed rule would adopt a constant catch strategy and modify the OFL and ABC to be 2,033,000 lb (922,153 kg) and 505,000 lb (229,064 kg), respectively. The stock ACL would be equal to the ABC.

Management Measures Contained in this Final Rule

This final rule revises the sector ACLs and ACTs for Gulf greater amberjack.

ACLs

The current stock ACL for Gulf greater amberjack is equal to the ABC of 1,794,000 lb (813,745 kg), and the current sector ACLs for Gulf greater amberjack are 484,380 lb (219,711 kg) for the commercial sector and 1,309,620 lb (594,034 kg) for the recreational sector. These catch levels are based on the results of SEDAR 33 Update, which used data from MRIP-CHTS. As explained above, had the current stock ACL been derived using MRIP-FES data, it

would have been 2,930,000 lb (1,329,026 kg). Amendment 54 would reduce the stock ACL for Gulf greater amberjack to 505,000 lb (229,064 kg). Applying the allocation selected by the Council in Amendment 54 results in a revised commercial ACL of 101,000 lb (45,813 kg) and a revised recreational ACL of 404,000 lb (183,251 kg).

ACTs

The Council applied its ACL/ACT Control Rule using landings data for 2013-2016 to set the current commercial and recreational sector buffers between the ACL and ACT. This results in reduction in the buffer between the commercial ACL and ACT from 13 percent to 7 percent. The buffer between the recreational ACL and ACT remains at 17 percent. Applying these buffers results in a revised commercial ACT of 93,930 lb (42,606 kg) and a revised recreational ACT of 335,320 lb (152,099 kg).

Management Measures in Amendment 54 Not Codified Through this Final Rule

OFL and ABC

The current OFL and ABC for Gulf greater amberjack are 2,167,000 lb (982,935 kg) and 1,794,000 lb (813,745 kg), respectively, and are based on the Council's SSC's recommendations from the SEDAR 33 Update, which used recreational landings estimates from MRIP-CHTS. Amendment 54 uses a constant catch OFL and ABC based on SEDAR 70 and consistent with the SSC's recommendations. The revised OFL

is 2,033,000 lb (922,153 kg) and the revised ABC is 505,000 lb (229,064 kg) .

Sector Allocations

The current sector allocation of the stock ACL (equal to the ABC) is 27 percent to the commercial sector and 73 percent to the recreational sector. Amendment 54 revises the Gulf greater amberjack allocation between the commercial and recreational sectors by using the average landings from 1993-2019 using MRIP-FES landings for this time series. This results in a new allocation of the Gulf greater amberjack stock ACL of 20 percent for the commercial sector and 80 percent for the recreational sector.

Comments and Responses

NMFS received 6 comments on the notice of availability for Amendment 54 and 13 comments on the proposed rule. In general, the comments supported the proposed measures to end overfishing and meet the rebuilding timeline for Gulf greater amberjack. However, some comments expressed concern about the change to MRIP-FES units and the increased percentage of the total ACL allocated to the recreational sector under the reduced catch limits. One comment stated that the Council is unconstitutional. Other comments stated the stock is fine and no catch limit reductions are needed. Some comments suggested changes to management measures that are outside the scope of the Amendment 54 and the proposed

rule, such as modifying the recreational bag limit, implementing a recreational vessel limit, modifying the commercial size limit, or modifying fixed closed seasons; these comments are not addressed further.

No changes were made to this final rule as a result of public comment.

Specific comments related to Amendment 54 and the proposed rule are grouped by topic and summarized below, followed by NMFS' respective responses.

Comment 1: The Council did not follow its Allocation Review Policy, which states that "prior to each allocation review, the Council will determine the suite of ecological, biological, economic, and social factors consistent with the NMFS Allocation Review Policy to be included in the review." Instead the Council only reviewed a presentation that identified where in Amendment 54 an allocation review took place.

Response: The Council did not follow its Allocation Review Guidelines in developing Amendment 54 because those guidelines were not applicable in this situation. As explained in the Allocation Review Guidelines, "[i]n some instances, e.g., following a stock assessment, the Council may elect to skip a formal allocation review and directly proceed with the development of an FMP amendment. In these cases, these guidelines would not apply." That is what occurred with Amendment 54, which was developed in response

to the most recent stock assessment (SEDAR 70) that indicated that the greater amberjack stock was not making adequate progress towards rebuilding. Because that stock assessment also incorporated the updated MRIP-FES recreational landings estimates, the Council also used Amendment 54 to review the sector allocations to determine whether an adjustment to the allocation was appropriate.

Comment 2: Amendment 54 is inconsistent with section 303(a)(15) of the Magnuson-Stevens Act because the OFL and ACLs include only landed fish, not both landed and discarded fish as required by the National Standard (NS) 1 (NS 1) Guidelines.

Response: Section 303(a)(15) of the Magnuson-Stevens Act requires the FMP to include ACLs, at a level such that overfishing does not occur, and AMs. The NS 1 Guidelines define catch as including both landed fish and dead discards (50 CFR 600.310(f)(3)(i)). However, the NS 1 Guidelines also state that the ABC, on which the ACLs are based, may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC. The OFL, ABC, and ACLs specified in Amendment 54 are derived from SEDAR 70, which accounts for dead discards (see Sections 2.3.2 and 3.1 at <https://sedarweb.org/documents/sedar-70-gulf-of-mexico-greater-amberjack-final-stock-assessment-report/>).

Comment 3: The allocation adopted by the Council in Amendment 54 increases the risk of overfishing because of the high level of dead discards from the recreational sector.

Response: The allocation adopted by the Council in Amendment 54 does not increase the risk of overfishing. The OFLs and ABCs recommended the SSC were derived from SEDAR 70, which accounts for dead discards by both sectors, and the risk of overfishing to the stock is the same under all of the allocation alternatives considered by the Council. The alternative OFLs (shown in the Action 1 Tables in Amendment 54 (pages 13-15)) are based on a 0.5 probability of overfishing (P^*). A P^* of 0.5 means that there is a 50 percent chance of overfishing at that level of harvest. The alternative ABCs in Amendment 54 are substantially below the OFL alternatives and correspond to a 50 percent chance of rebuilding by 2027. Further, while the total ACL is set equal to the ABC, there is a buffer between each sector's respective ACL and ACT.

Comment 4: It is arbitrary to automatically reallocate from the commercial sector to the recreational sector based on the revised MRIP-FES landing estimates. In addition, the adjusted historical recreational landings estimates are uncertain and reservations about the data should be resolved before they are used for allocation decisions.

Response: The inclusion of the MRIP-FES landings estimates in SEDAR 70 did not result in an automatic sector reallocation. However, this change in the recreational landings estimates did prompt the Council to review the current commercial and recreational allocation to determine whether it was still appropriate. The Council conducted this review in Amendment 54 and considered four allocation alternatives: maintaining the current percentages; maintaining the time series used to set the current allocation (1981-2004) updated with MRIP-FES landings estimates; updating the time series to start when commercial greater amberjack landings began to be identified to species level and end when the current allocation was implemented (1993-2007); and updating the time series to start when commercial greater amberjack landings began to be identified to species level and end with the most recent year of data available at the time Council work on this amendment began (1993-2019). The Council determined, and NMFS agrees, that it is appropriate to update the sector allocations using the MRIP-FES adjusted data from 1993-2019 because this represented the longest time series during which commercial greater amberjack landings have been identified to the species level.

NS 2 requires that conservation and management measures be based upon the best scientific information

available. NMFS has determined that Amendment 54 is consistent with NS 2 and that the MRIP-FES landings estimates represent the best scientific information available. This determination is supported by a February 2, 2023, memorandum from the SEFSC as well as the recommendations from the Council's SSC. The SEDAR 70 stock assessment incorporated landings data from the MRIP-FES survey, which is considered a better survey than the prior MRIP-CHTS survey (see <https://www.fisheries.noaa.gov/recreational-fishing-data/effort-survey-improvements>). In July 2020, the Council's SSC held a workshop on calibrating MRIP-FES and MRIP-CHTS (<https://gulfcouncil.org/ssc/archive/>; July 2020). The SSC examined the differences in methodology and outcomes between the fishing effort estimates produced by the different surveys. At that time, the SSC recommended that the Council wait for a stock assessment before adopting a different data unit for quota monitoring, which was done for the greater amberjack stock. As discussed in the Section 2.1 of Amendment 54 (page 15), the SSC accepted SEDAR 70 as the best scientific information available, specifically acknowledging that it utilizes MRIP-FES recreational landings estimates.

Comment 5: Amendment 54 violates NS 4 because the revised sector allocation is not fair and equitable by forcing the commercial sector to subsidize dead discards in

the recreational sector. The revised allocation also fails to promote conservation by allowing for an increase in recreational dead discards, reducing overall yield, and increasing the risk of overfishing.

Response: National Standard 4 requires, in relevant part, that any allocation be fair and equitable, and reasonably calculated to promote conservation. NMFS has determined that Amendment 54 is consistent with NS 4. As explained in response to *Comment 4*, the Council considered four allocation alternatives and chose to update the allocation using the time series that uses the updated MRIP-FES recreational landings estimates, beginning when commercial greater amberjack landings began to be identified to species level and ending with the most recent year of data available at the time work on this amendment began (1993-2019). The Council determined, and NMFS agrees, that this results in an allocation that is fair and equitable because it accounts for both the transition to MRIP-FES and the fact that commercial landings of greater amberjack prior to 1993 may not have been properly identified to the species level.

The commercial sector is not subsidizing dead discards from the recreational sector. Recreational fishing for greater amberjack (and many other reef fish species) typically involves higher levels of discards than for the commercial sector. The allocation implemented through this

final rule does result in less total annual harvest by both sectors. However, the commercial and recreational sectors have different objectives, and operate differently to achieve those objectives. Participants in the commercial sector tend to seek to maximize harvest and efficiency while participants in the recreational sector tend to seek to maximize access and opportunities. These different goals and objectives impact fishing behavior, which generally results in more discards by the recreational sector. The Council and NMFS must consider and account for these differences when determining whether an allocation fairly and equitably allocates fishing privileges and provides the greatest overall benefit to the Nation with respect to both food production and recreational opportunities. Further, the reduction that results from the shift in allocation is relatively minor. Using the new allocation results in an ABC/stock ACL of 505,000 lb (229,064 kg) while using the previous allocation would have resulted in an ABC/stock ACL of 521,000 lb (236,322 kg). The large reduction in the total allowable harvest in Amendment 54 is not a result of the shift in allocation but the result of SEDAR 70 and the determination that the stock is not making adequate progress towards rebuilding.

With respect to promoting conservation, the NS 4 Guidelines state that a conservation and management measure "may promote conservation (in the sense of wise use) by

optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.” The revised allocation promotes wise use by considering both the biological impacts to the greater amberjack stock, and the economic and social impacts to fishery participants. The allocation and associated catch limits are consistent with the result of SEDAR 70 and the SSC’s recommendations, and are expected to allow the stock to rebuild by 2027. As explained previously, the revised allocation results in a relatively minor reduction of the total yield while maintaining the historical balance between recreational access and commercial harvest. And, as explained in response to *Comment 3*, the risk of overfishing is the same for all of the allocation alternatives. To further reduce the risk, the seasons for the commercial and recreational sectors are determined based on the ACT, which is reduced from each sector’s ACL. For the recreational sector, the Council retained the buffer between the ACL and ACT of 17 percent to better account for the uncertainty in monitoring recreational landings. Further, if recreational landings exceed the recreational ACL, the recreational ACL and ACT are reduced the following year by the amount of the recreational ACL overage. The Council also selected a constant catch reduced catch limit to be more conservative

and increase the chances of meeting rebuilding.

With respect to dead discards, SEDAR 70 assumes that dead discards from the recreational sector increase as the allocation to that sector increases, but does not take into account that fishermen are able to specifically target greater amberjack and a catch and release fishery is already occurring in the recreational sector. Thus, discards are not expected to substantially increase, even under the reduced catch limits.

Comment 6: Amendment 54 violates NS 9 because the revised allocation would increase bycatch and dead discards from the recreational sector.

Response: NS 9 requires that conservation and management measures, "to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Conservation and management measures must also be consistent with the other national standards. As the National Standard Guidelines explain, several factors should be considered when determining consistency with NS 9. These factors include population effects for the bycatch species; changes in the economic, social, or cultural value of fishing activities, and non-consumptive uses of fishery resources; changes in the distribution of benefits and costs; and social effects (50 CFR 600.305(d)(3)). As explained in response to *Comment 3*, the impacts to the

greater amberjack stock are similar under all of the allocation alternatives considered by the Council because the alternative OFLs are based on a fixed level of fishing mortality. When the inputs into the stock assessment model include more recreational harvest than previously assumed, this leads to lower OFL and ABC estimates at equilibrium. Therefore, the new allocation allows for less total harvest than the current allocation. However, the difference between the reduced ABCs under all of the action alternatives is minimal, and a substantial reduction in the total ACL is required under any of the allocation alternatives. In addition, the new allocation addresses the updated recreational landings estimates using MRIP-FES and issues with commercial reporting prior to 1993, as well as to incorporate landings data from more recent years. Given the numerous factors that the Council must consider in selecting the appropriate allocation, Amendment 54 does minimize bycatch and bycatch mortality to the extent practicable.

Comment 7: The greater amberjack stock seems healthy and, therefore, the actions in Amendment 54 are not needed.

Response: The first stock assessment of greater amberjack was completed in 2000 and indicated that the stock was overfished and undergoing fishing. The greater amberjack stock was then put under a rebuilding plan with Secretarial Amendment 2 in 2003 and has been in one ever

since. Since the initial stock assessment, several more assessments have shown that greater amberjack continues to undergo overfishing and is not rebuilding as projected. SEDAR 70 was completed in October 2020, and used a terminal year of 2018. SEDAR 70 updated recreational catch and effort data from MRIP-AP AIS and CHTS to FES, which collectively estimated larger catch and effort data than previously calculated for the recreational sector. The assessment concluded that greater amberjack in the Gulf was overfished and experiencing overfishing and has been overfished and undergoing overfishing almost continuously since 1980. It also indicated that a significant reduction in harvest is necessary to rebuild the stock by 2027, the rebuilding time established by the Council in 2017. For the purposes of OFL and ABC, these projections recommended by the SSC form the basis for the allocation alternatives in Amendment 54. Amendment 54 is based on the best scientific information available that was in place at the time of its development. The Council began work on this amendment in January 2021, and took final action to submit the amendment for review and implementation during its October 2022 meeting.

Comment 8: The reduction in the total ACL will have extreme adverse economic effects on the commercial sector and associated businesses. These adverse economic effects

to the commercial sector and associated businesses will be amplified by the change in the sector allocation.

Response: The economic analysis in Amendment 54 indicates that the reduction in the total ACL and change in the sector allocation will have adverse economic effects on the commercial sector. However, in combination with the action to reduce the buffer between the commercial ACL and ACT, the estimated reduction in economic profits to commercial harvesting businesses is only 1.6 percent because greater amberjack only accounts for about 1.7 percent of commercial fishing vessels' average annual revenue. Given that economic profits are approximately 38 percent of these vessels' annual average gross revenue, this reduction would not be considered extreme. In comparison, the estimated reduction in economic profits to for-hire fishing businesses as a result of the actions in Amendment 54 is much larger at more than 13 percent. Further, the reduction to the commercial ACT as a result of the actions in Amendment 54 is expected to reduce the amount of greater amberjack available for purchase by dealers and other businesses up the seafood supply chain. However, greater amberjack only accounts for about 1 percent of seafood purchases by dealers who buy greater amberjack. Therefore, the adverse economic effects to dealers and other businesses as a result of the reduction in the commercial ACT are expected to be relatively small.

Comment 9: The Council process under the Magnuson-Stevens Act violates the Appointments, Executive Vesting, and Take Care clauses of the U.S. Constitution and, as a result, this rulemaking is legally invalid. Council members are not properly appointed to their positions as officers of the United States. Because they make policy decisions for Federal fisheries management in their region, Council members are 'principal' or at minimum 'inferior' Federal officers. But because they are improperly appointed, unsupervised, and immune from removal, they hold office unlawfully and lack the Federal authority to issue Amendment 54.

Response: The commenters misunderstand the function and authority of the Council, which is neither an "unaccountable" or "illegally constituted" body. The Magnuson-Stevens Act establishes the Council structure in order for state officials, fishermen, scientists, and other stakeholders to provide important expert input on fishery management. But the Council acts as an advisory body only: authority to issue Federal regulations to implement fishery management measures that impact fishermen is vested solely in the Secretary of Commerce. This final rule implements Amendment 54, which NMFS, through delegation of authority from the Secretary, has approved as consistent with the Magnuson-Stevens Act and other applicable law. Under section 304 of the Magnuson-Stevens Act, NMFS, acting

through delegated authority from the Secretary, retains significant discretion to reject Council recommendations, including the proposed regulations that the Council submitted to NMFS to implement Amendment 54.

In addition, Federal courts have held that fishery management councils are not considered Federal agencies for the purposes of the Administrative Procedure Act and that Council members are not Federal "officers" under the U.S. Constitution as suggested by the commenters. Council members do not occupy continuing positions or exercise significant authority. As simply stated by one court, fishery management councils have "no authority to do anything" because final decision-making power rests with the Secretary. In light of this lack of Federal agency status and decision making authority, the council members are not Federal officers and need not be appointed in a specific way to be consistent with the U.S. Constitution. The commenters' view that council members act as Federal officers is inaccurate; although council members are engaged in important work that helps manage regional fisheries, it is the Secretary who exercises the authority of the Magnuson-Stevens Act by promulgating the regulations that affect the commenters.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that

this final rule is consistent with Amendment 54, the FMP, other provisions of the Magnuson-Stevens Act, the U.S. Constitution, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS' response to one public comment regarding the IRFA and the Executive Order 12866 analysis is in this **SUPPLEMENTARY INFORMATION** section of the preamble (see *Comment #8* in the **Comments and Responses**). A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objectives of this final rule are to end overfishing and rebuild the greater amberjack stock as required by the Magnuson-Stevens Act, and update existing greater amberjack catch limits and allocations to be consistent with the best scientific information available, FMP objectives, and contemporary data collection methods.

All monetary estimates in the following analysis are in 2020 dollars.

This final rule revises the sector allocations of the total ACL for Gulf greater amberjack from 73 percent for the recreational sector and 27 percent for the commercial sector to 80 percent for the recreational sector and 20 percent for the commercial sector. The current OFL, ABC, and total ACL are 2.167 million lb (982,935 kg), 1.794 million lb (813,745 kg), and 1.794 million lb (813,745 kg), respectively. The recreational portion of these values are based on MRIP-CHTS data. This final rule changes the OFL and ABC to 2.033 million lb (922,153 kg) and 505,000 lb (229,064 kg), respectively, consistent with the results of the most recent stock assessment and the recommendations of the Council's SSC, and set the total ACL equal to the ABC of 505,000 lb (229,064 kg). The recreational portion of these values are based on MRIP-FES data. Applying the new sector allocations changes the recreational ACL from 1,309,620 lb (594,033 kg) in MRIP-CHTS units to 404,000 lb (183,251 kg) in MRIP-FES units and reduces the commercial ACL from 484,380 lb (219,675 kg) to 101,000 lb (45,812 kg). This final rule retains the current 17 percent buffer between the recreational ACL and ACT. As such, the recreational ACT is revised from 1,086,985 lb (493,048 kg) in MRIP-CHTS units to 335,320 lb (152,099 kg) in MRIP-FES units given the final reduction in the recreational ACL.

This final rule also decreases the buffer between the commercial ACL and ACT from 13 percent to 7 percent, and thereby reduces the commercial ACT from 421,411 lb (191,148 kg) to 93,930 lb (42,606 kg) given the reduction in the commercial ACL. As a result, this final rule is expected to regulate commercial and charter vessel/headboat (for-hire) fishing businesses that harvest Gulf greater amberjack.

A valid commercial Gulf reef fish vessel permit is required in order for commercial fishing vessels to legally harvest greater amberjack in the Gulf. At the end of 2020, 837 vessels possessed a valid commercial Gulf reef fish vessel permit. However, not all vessels with a commercial Gulf reef fish permit actually harvest greater amberjack in the Gulf. From 2016 through 2020, the average number of vessels that commercially harvested Gulf greater amberjack was 201. Ownership data regarding vessels that harvest Gulf greater amberjack is incomplete. Therefore, accurately determining affiliations between these particular vessels is not currently feasible. Because of the incomplete ownership data, for purposes of this analysis, NMFS assumes each of these vessels is independently owned by a single business, which NMFS expects to result in an overestimate of the actual number of businesses directly regulated by this final rule. Thus, NMFS assumes this final rule would regulate and directly affect 201 commercial fishing businesses.

Although the changes to the recreational ACL and ACT would apply to recreational anglers, the RFA does not consider recreational anglers to be entities. Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions and so they are outside the scope of this analysis (5 U.S.C. 603).

A valid charter vessel/headboat Gulf reef fish vessel permit is required in order for for-hire vessels to legally harvest greater amberjack in the Gulf. NMFS does not possess complete ownership data regarding vessels that hold charter vessel/headboat Gulf reef fish vessel permits, and thus potentially harvest greater amberjack. Therefore, accurately determining affiliations between these vessels and the businesses that own them is not currently feasible. As a result, for purposes of this analysis, NMFS assumes each for-hire vessel is independently owned by a single business, which NMFS expects to result in an overestimate of the actual number of for-hire fishing businesses regulated by this final rule.

This final rule is only expected to alter the fishing behavior of for-hire vessels that target greater amberjack in the Gulf (*i.e.*, the behavior of for-hire vessels that incidentally harvest greater amberjack in the Gulf is not expected to change). Therefore, only for-hire vessels that

target greater amberjack in the Gulf are expected to be directly affected by this final rule. NMFS does not possess data indicating how many for-hire vessels actually harvest or target Gulf greater amberjack in a given year. However, in 2020, there were 1,289 vessels with valid charter vessel/headboat Gulf reef fish vessel permits. Further, Gulf greater amberjack is primarily targeted in waters off the west coast of Florida. Of the 1,289 vessels with valid charter vessel/headboat Gulf reef fish vessel permits, 803 were homeported in Florida. Of these permitted vessels, 62 are primarily used for commercial fishing rather than for-hire fishing purposes and thus are not considered for-hire fishing businesses. In addition, 46 of these permitted vessels are considered headboats, which are considered for-hire fishing businesses. However, headboats take a relatively large, diverse set of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species. Therefore, NMFS assumes that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this final rule. However, charter vessels often target greater amberjack. Of the 803 vessels with valid charter vessel/headboat Gulf reef fish vessel permits that are homeported in Florida, 695 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with valid charter vessel/headboat permits in the Gulf were

active in 2017 (*i.e.*, 24 percent were not fishing). A charter vessel would only be directly affected by this final rule if it is fishing. Given this information, the best estimate of the number of charter vessels that are likely to target Gulf greater amberjack in a given year is 528. Thus, this final rule is estimated to regulate and directly affect 528 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide. From 2016 through 2020, the maximum annual gross revenue earned by a single commercial reef fish vessel during this time was about \$1.73 million, while the average annual gross revenue for a vessel commercially harvesting Gulf greater amberjack was \$190,612. Based on this information, all commercial fishing businesses regulated by this final rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major

industry sectors in the U.S., including for-hire businesses (North American Industry Classification System (NAICS) code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$12.5 million for all its affiliated operations worldwide. NMFS does not have the necessary data to estimate the maximum annual gross revenue for all regulated charter vessels. However, the maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels. Based on this information, all for-hire fishing businesses regulated by this final rule are determined to be small businesses for the purpose of this analysis.

NMFS expects this final rule to directly affect 201 of the 837 vessels with commercial Gulf reef fish permits, or approximately 24 percent of those commercial fishing businesses. Further, this final rule is expected to directly affect 528 of the 1,227 for-hire fishing businesses with valid charter vessel/headboat permits in the Gulf reef fish fishery, or approximately 43 percent of those for-hire fishing businesses. All regulated commercial and for-hire fishing businesses have been determined, for

the purpose of this analysis, to be small entities. Based on this information, this final rule is expected to affect a substantial number of small businesses.

For vessels that commercially harvest greater amberjack in the Gulf, currently available data indicates that economic profits are approximately 38 percent of annual average gross revenue. Given that their average annual gross revenue is \$190,612, annual average economic profit per vessel is estimated to be approximately \$72,433. The action to change the sector allocations and the total ACL would reduce the commercial ACL and thus also reduce the commercial ACT (commercial quota). The commercial quota, which is used to constrain harvest, will decrease from 421,411 lb (191,149 kg) to 87,870 lb (39,857 kg). However, average commercial landings of Gulf greater amberjack were 429,113 lb (194,642 kg) from 2015-2019. Thus, the reduction in commercial landings is expected to be 341,243 lb (154,785 kg), or 328,119 lb (148,832 kg), gutted weight. This reduction in commercial landings is not expected to increase the average ex-vessel price due to the relatively high number of substitute products (e.g., imports, other reef fish species landed in the Gulf and South Atlantic, etc.). Thus, assuming the average ex-vessel price of \$1.92 per lb, gutted weight, from 2016-2020, annual gross revenue is expected to decrease by \$629,988, and economic profit is expected to decrease by \$239,395. On

a per vessel basis, annual gross revenue and economic profit are expected to decrease by \$3,134 and \$1,191, respectively.

Based on the most recent information available, average annual economic profits are approximately \$27,000 per charter vessel. The action to change the sector allocations and the total ACL revises the recreational ACL and thus also revises the recreational ACT, which is used to constrain harvest. The change to the recreational ACT is expected to change the length of the recreational fishing season. The recreational ACT reduction is expected to reduce the recreational season length from 123 days to 20 days. From 2018 through 2021, the average number of trips targeting Gulf greater amberjack by charter vessels was 14,379. The expected number of target trips under the projected season length of 20 days is 1,221 trips, and thus target trips are expected to decline by 13,158 trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be \$143 per angler trip. Thus, the estimated reduction in charter vessel profits from this action is expected to be about \$1.882 million, or \$3,564 per for-hire fishing business. Thus, economic profits are expected to be reduced by more than 13 percent on average per for-hire fishing business.

The action to reduce the buffer between the commercial ACL and ACT from 13 percent to 7 percent will increase the commercial ACT by 6,060 lb (2,749 kg), or 5,827 lb (2,643 kg), gutted weight, relative to what it would be under the action to decrease the commercial ACL. Given the significant reduction in the commercial ACL relative to recent average commercial landings, these additional pounds are expected to be harvested. The expected increase in commercial landings is expected to increase average annual gross revenue by \$11,188 and thus economic profit by \$4,251. On a per vessel basis, annual gross revenue and economic profit are expected to increase by \$56 and \$21, respectively.

Based on the action to reduce the commercial catch limits and the reduction in the buffer between the commercial ACL and ACT, the total reductions in gross revenue and economic profits for commercial fishing businesses from this rule are expected to be \$618,800 and \$235,144, respectively. On a per vessel basis, the total reductions in annual gross revenue and economic profit are expected to be \$3,079 and \$1,170, respectively. Thus, economic profits are expected to be reduced by approximately 1.6 percent on average per commercial fishing business.

Five alternatives, including the status quo, were considered for the action to revise the sector allocations,

OFL, ABC, total ACL, and sector ACLs for greater amberjack in the Gulf. The first alternative, the status quo, would have retained the current allocation of the total ACL between the recreational and commercial sectors at 73 percent and 27 percent, respectively. It also would have maintained the OFL, ABC, total ACL, recreational ACL, and commercial ACL at 2.167 million lb (982,935 kg), 1.794 million lb (813,745 kg), 1.794 million lb (813,745 kg), 1,309,620 lb (594,033 kg), and 484,380 lb (219,675 kg), respectively. This alternative was not selected as it would not be based on the best scientific information available and therefore is inconsistent with National Standard 2 of the Magnuson-Stevens Act. Further, this alternative is inconsistent with the SSC's OFL and ABC recommendations.

The second alternative would have maintained the allocation of the total ACL at 73 percent recreational and 27 percent commercial. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. This alternative would be based on the best scientific information available and is consistent with the SSC's OFL and ABC recommendations. However, this alternative was not selected by the Council because it is partly based on MRFSS data, which significantly

underestimates historical landings and effort in the recreational sector and thus does not accurately reflect the importance of Gulf greater amberjack to the recreational sector during the time period used as the basis for the status quo allocation (*i.e.*, 1981-2004).

The third alternative would have revised the allocation of the total ACL to 84 percent recreational and 16 percent commercial based on landings from the same timeframe as the status quo allocation (*i.e.*, 1981-2004), but using recreational landings based on MRIP-FES data. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council recognized that the greater amberjack stock is overfished and has not rebuilt as expected under the current and previous rebuilding plans. This alternative was not selected by the Council because the allocation is based on years during which commercial landings of greater amberjack were not identified at the species level. In addition, the catch limits increased over time and the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

The fourth alternative would have revised the allocation of the total ACL to 78 percent recreational and

22 percent commercial based on MRIP-FES average landings during the years 1993 through 2007. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total stock ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council recognized that the greater amberjack stock is overfished and has not rebuilt as expected under the current and previous rebuilding plans. This alternative was not selected by the Council because the allocation does not include the more recent years, which reflect current participation. In addition, the catch limits would increase over time and the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

The fifth alternative would have revised the allocation of the total ACL to 80 percent recreational and 20 percent commercial based on MRIP-FES average recreational landings during the years 1993 through 2019. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total stock ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council did not select this alternative because the greater amberjack stock is overfished and has not rebuilt as expected under the

current and previous rebuilding plans. Therefore, the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

Two alternatives, including the status quo, were considered for the action to decrease the buffer between the commercial ACL and ACT from 13 percent to 7 percent. The first alternative, the status quo, would have retained the current 13 percent buffer. This alternative was not selected by the Council because it is based on commercial landings data from 2013-2016 and more recent commercial landings data are available and considered to be more representative of current commercial fishing practices.

The second alternative would have reduced the buffer between the commercial ACL and ACT from 13 percent to 7 percent, but would have also reduced the recreational buffer from 17 percent to 13 percent, based on landings data from 2017-2020. This alternative was not selected by the Council because landings in 2020 were likely affected by the COVID-19 pandemic, as reflected by the lack of closures that are common in this fishery, and thus are likely not representative of typical recreational fishing practices.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more

guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.*, fishery bulletin, will be sent to all known industry contacts in the Gulf reef fish fishery and be posted at: https://www.fisheries.noaa.gov/tags/small-entity-compliance-guide?title=&field_species_vocab_target_id=&field_region_vocab_target_id%5B1000001121%5D=1000001121&sort_by=created. The guide and this final rule will be available upon request.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date for changes to the commercial quota and ACL specified in 50 CFR 622.39(a)(1)(v) and 622.41(a)(1)(iii). The most recent landings estimates indicate that commercial harvest of greater amberjack for this fishing year has reached the revised commercial quota and ACL implement in this final rule. The commercial AMs require NMFS to prohibit harvest

of greater amberjack when commercial landings reach or are projected to reach the commercial ACT (quota) and if commercial landings exceed the commercial ACL, then during the following fishing year, both the commercial quota and the commercial ACL must be reduced by the amount of any commercial ACL overage. Commercial harvest of greater amberjack is prohibited during March, April, and May each year under 50 CFR 622.36(a), reopening on June 1. NMFS is unable to prohibit further commercial harvest under the AMs unless the reduced quota in this final rule is effective. If harvest continues during the 2023 fishing year, it is likely to result in a significant overage of the new commercial ACL, which would require NMFS to reduce the commercial quota for the 2024 fishing year. If the overage exceeds the reduced quota in this final rule, no commercial harvest of greater amberjack would be permitted in 2024. Therefore, it is necessary to have the revised commercial catch levels in this final rule effective upon publication. This will allow NMFS to implement the required AM based on the revised quota and provide commercial harvest opportunities in 2024 by limiting any required reduction in the 2024 quota. A waiver of the 30-day delay in effectiveness for the recreational quota and ACL specified in 50 CFR 622.39(a)(2)(ii) and 622.41(a)(2)(iii) is not necessary because recreational harvest is prohibited until August 1, as a result of an annual seasonal closure.

List of Subjects in 50 CFR Part 622

Annual catch limits, Commercial, Fisheries, Fishing,
Greater amberjack, Gulf of Mexico, Recreational.

Dated: June 8, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective [*insert date of publication in the
FEDERAL REGISTER*], in § 622.39, revise paragraph (a)(1)(v)
to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(v) Greater amberjack - 93,930 lb (42,606 kg), round weight.

* * * * *

3. Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*], § 622.39 is further amended by revising paragraph (a)(2)(ii) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 335,320 lb (152,099 kg), round weight.

* * * * *

4. Effective [*insert date of publication in the FEDERAL REGISTER*], in § 622.41, revise paragraph (a)(1)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(1) * * *

(iii) The commercial ACL for greater amberjack, in round weight, is 101,000 lb (45,813 kg).

* * * * *

5. Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*], § 622.41 if further amended by revising paragraph (a)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(2) * * *

(iii) The recreational ACL for greater amberjack, in round weight, is 404,000 lb (183,251 kg).

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